

**CHAPTER 39.29
RCW****PERSONAL SERVICE CONTRACTS**Sections

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RCW 39.29.003 Intent.

It is the intent of this chapter to establish a policy of open competition for all personal service contracts entered into by state agencies, unless specifically exempted under this chapter. It is further the intent to provide for legislative and executive review of all personal service contracts, to centralize the location of information about personal service contracts for ease of public review, and ensure proper accounting of personal services expenditures. [1998 c 101 § 1, 1993 c 433 § 1, 1987 c 414 § 1, 1979 ex.s. c 61 § 1.]

RCW 39.29.006 Definitions.

As used in this chapter:

(1) "Agency" means any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, and educational, correctional, and other types of institutions.

(2) "Client services" means services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing.

(3) "Competitive solicitation" means a documented formal process providing and equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(4) "Consultant" means an independent individual or firm contracting with an agency to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control of the agency except as to the result of the work. The agency monitors progress under the contract and authorizes payment.

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(5) "Emergency" means a set of unforeseen circumstances beyond the control of the agency that either:

- (a) Present a real, immediate threat to the proper performance of essential functions; or
- (b) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

(6) "Evidence of competition" means documentation demonstrating that the agency has solicited responses from multiple firms in selecting a consultant.

(7) "Personal service" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement. This term does not include purchased services as defined under subsection (9) of this section. This term does include client services.

(8) "Personal service contract" means agreement, or any amendment thereto, with a consultant for the rendering of personal services to the state which is consistent with RCW 41.06.380.

(9) "Purchased services" means services provided by a vendor to accomplish routine, continuing and necessary functions. This term includes, but is not limited to, services acquired under RCW 43.19.190 or 43.105.041 for equipment maintenance and repair, operation of a physical plant, security, computer hardware and software maintenance, data entry, key punch services, and computer time-sharing, contract programming, and analysis.

(10) "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on either the uniqueness of the service or sole availability at the location required. [1998 c 101 § 2, 1993 c 433 § 2, 1987 c 414 § 2, 1981 c 263 § 1, 1979 ex.s. c 61 § 2.]

RCW 39.29.008 Limitation on personal service contracts.

Personal services may be procured only to resolve a particular agency problem or issue or to expedite a specific project that is temporary in nature. An agency may procure personal services only if it documents that:

- (1) The service is critical to agency responsibilities or operations, or is mandated or authorized by the legislature;
- (2) Sufficient staffing or expertise is not available within the agency to perform the service; and
- (3) Other qualified public resources are not available to perform the service. [1993 c 433 § 6.]

RCW 39.29.011 Competitive solicitation required—Exceptions.

All personal service contracts shall be entered into pursuant to competitive solicitation, except for:

- (1) Emergency contracts;
- (2) Sole source contracts;
- (3) Contract amendments;
- (4) Contracts between a consultant and an agency of less than twenty thousand dollars. However, contracts of five thousand dollars or greater but less than twenty thousand dollars shall have documented evidence of competition. Agencies shall not structure contracts to evade these requirements, and
- (5) Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the director of the office of financial management when it has been determined that a competitive solicitation process is not appropriate or cost-effective. [1998 c 101 § 3, 1987 c 414 § 3.]

RCW 39.29.016 Emergency contracts.

Emergency contracts shall be filed with the office of financial management and made available for public inspection within three working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to the office of financial management when the contract is filed. [1998 c 101 § 4, 1996 c 288 § 29, 1987 c 414 § 4.]

RCW 39.29.018 Sole source contracts.

(1) Sole source contracts shall be filed with the office of financial management and made available for public inspection at least ten working days prior to the proposed starting date of the contract.

Documented justification for sole source contracts shall be provided to the office of financial management when the contract is filed. For sole source contracts of twenty thousand dollars or more, documented justification shall include evidence that the agency attempted to identify potential consultants by advertising through state-wide or regional newspapers.

(2) The office of financial management shall approve sole source contracts of twenty thousand dollars or more before any such contract becomes binding and before any services may be performed under the contract. These requirements shall also apply to sole source contracts of less than twenty thousand dollars if the total amount of such contracts between an agency and the same consultant is twenty thousand dollars or more within a fiscal year. Agencies shall ensure that the costs, fees, or rates negotiated in filed sole source contracts of twenty thousand dollars or more are reasonable. [1998 c 101 § 5, 1996 c 288 § 30, 1993 c 433 § 5, 1987 c 414 § 5.]

RCW 39.29.020 Compliance—Expenditure of funds prohibited—Civil penalty.

No state officer or activity of state government subject to this chapter shall expend any funds for personal service contracts unless the agency has complied with the competitive procurement and other requirements of this chapter. The state officer or employee executing the personal service contracts shall be responsible for compliance with the requirements of this chapter. Failure to comply with the requirements of this chapter shall subject the state officer or employee to a civil penalty in the amount of three hundred dollars. A consultant who knowingly violates this chapter in seeking or performing work under a personal services contract shall be subject to a civil penalty of three hundred dollars or twenty-five percent of amount of the contract, whichever is greater. The state auditor is responsible for auditing violations of this chapter. The attorney general is responsible for prosecuting violations of this chapter. [1987 c 414 § 6, 1974 ex.s. c 191 § 2.]

RCW 39.29.025 Amendments.

(1) Substantial changes in either the scope of work specified in the contract or in the scope of work specified in the formal solicitation document must generally be awarded as new contracts. Substantial changes executed by contract amendments must be submitted to the office of financial management, and are subject to approval by the office of financial management.

(2) An amendment or amendments to personal service contracts, if the value of the amendment or amendments, whether singly or cumulatively, exceeds fifty percent of the value of the original contract must be provided to the office of financial management.

(3) The office of financial management shall approve amendments provided to it under this section before the amendments become binding and before services may be performed under the amendments.

(4) The amendments must be filed with the office of financial management and made available for public inspection at least ten working days prior to the proposed starting date of services under the amendments.

(5) The office of financial management shall approve amendments provided to it under this section only if they meet the criteria for approval of the amendments established by the director of the office of financial management. [1998 c 101 § 6, 1996 c 288 § 31, 1993 c 433 § 3.]

RCW 39.29.040 Exemption of certain contracts.

This chapter does not apply to:

(1) Contracts specifying a fee of less than five thousand dollars if the total of the contracts from that agency with the contractor within a fiscal year does not exceed five thousand dollars;

(2) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;

(3) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;

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(4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;

(5) Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;

(6) Contracts for client services;

(7) Contracts for architectural and engineering services as defined in RCW 39.80.020, which shall be entered into under chapter 39.80 RCW;

(8) Contracts for the employment of expert witnesses for the purposes of litigation; and

(9) Contracts for bank supervision authorized under RCW 30.38.040. [1998 c 101 § 7; 1996 c 2 § 19; 1995 c 80 § 1; 1987 c 414 § 7; 1986 c 33 § 3; 1979 ex.s. c 61 § 4.]

NOTES:

Severability—1996 c 2: See RCW 30.38.900.

RCW 39.29.050 Contracts subject to requirements established under office of minority and women's business enterprises.

All contracts entered into under this chapter on or after September 1, 1983, are subject to the requirements established under chapter 39.19 RCW. [1983 c 120 § 12.]

NOTES:

Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120: See RCW 39.19.910, 39.19.920.

RCW 39.29.055 Contracts—Filing—Public inspection—Review and approval—Effective date.

(1) Personal service contracts subject to competitive solicitation shall be (a) filed with the office of financial management and made available for public inspection; and (b) reviewed and approved by the office of financial management when those contracts provide services relating to management consulting, organizational development, marketing, communications, employee training, or employee recruiting.

(2) Personal service contracts subject to competitive solicitation that provide services relating to management consulting, organizational development, marketing, communications, employee training, or employee recruiting shall be made available for public inspection at least ten working days before the proposed starting date of the contract. All other contracts shall be effective no earlier than the date they are filed with the office of financial management. [1998 c 101 § 8; 1996 c 288 § 32/ 1993 c 433 § 7.]

RCW 39.29.065 Office of financial management to establish procedures—Adjustment of dollar thresholds.

To implement this chapter, the director of the office of financial management shall establish procedures for the competitive solicitation and award of personal service contracts, recordkeeping requirements, and procedures for the reporting and filing of contracts. For reporting purposes, the director may establish categories for grouping of contracts. The procedures required under this section shall also include the criteria for amending personal service contracts. At the beginning of each biennium, the director may, by administrative policy, adjust the dollar thresholds prescribed in RCW 39.29.011, 39.29.018, 39.29.040, and *39.29.068 to levels not to exceed the percentage increase in the implicit price deflator. Adjusted dollar

thresholds shall be rounded to the nearest five hundred dollar increment. [1998 c 101 § 9; 1987 c 414 § 8.]

NOTES:

***Reviser's note:** The dollar thresholds prescribed in RCW 39.29.068 were amended by 1998 c 101 § 10, and removed by 1998 c 245 § 33.

RCW 39.29.068 Office of financial management to maintain list of contracts—Report to legislature (as amended by 1998 c 101).

The office of financial management shall maintain a publicly available list of all personal service contracts entered into by state agencies during each fiscal year. The list shall identify the contracting agency, the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis. The office of financial management shall also ensure that state accounting definitions and procedures are consistent with RCW 39.29.006 and permit the reporting of personal services expenditures by agency and by type of service. Designations of type of services shall include, but not be limited to, management and organizational services, legal and expert witness services, financial services, computer and information services, social or technical research, marketing, communications, and employee training or recruiting services. The Office of Financial Management shall report annually to the fiscal committees of the Senate and House of Representatives on sole source contracts filed under this chapter. The report shall describe (1) The number and aggregate value of contracts for each category established in this section; (2) the number and aggregate value of contracts of five thousand dollars or greater but less than twenty thousand dollars; (3) the number and aggregate value of contracts of twenty thousand dollars or greater; (4) the justification provided by agencies for the use of sole source contracts; and (5) any trends in the use of sole source contracts. [1998 c 101 § 10; 1993 c 433 § 8.]

RCW 39.29.068 Office of financial management to maintain list of contracts (as amended by 1998 c 245).

The office of financial management shall maintain a publicly available list of all personal service contracts entered into by state agencies during each fiscal year. The list shall identify the contracting agency, the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis. The office of financial management shall also ensure that state accounting definitions and procedures are consistent with RCW 39.29.006 and permit the reporting of personal services expenditures by agency and by type of service. Designations of type of services shall include, but not be limited to, management and organizational services, legal and expert witness services, financial services, computer and information services, social or technical research, marketing, communications and employee training or recruiting services. [1998 c 245 § 33; 1993 c 433 § 8.]

NOTES:

Reviser's note: RCW 39.29.068 was amended twice during the 1998 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

RCW 39.29.075 Summary reports on contracts.

As requested by the legislative auditor, the office of financial management shall provide information on contracts filed under this chapter for use in preparation of summary reports on personal services contracts. [1987 c 414 § 9.]

RCW 39.29.080 Data generated under personal services contracts.

A state agency may not enter into a personal services contract with a consultant under which the consultant could charge additional costs to the agency, the joint legislative audit and review committee, or the state auditor for access to data generated under the contract. A consultant under such contract shall provide access to data generated under the contract to the contracting agency, the joint legislative audit and review committee, and the state auditor. For purposes of this section, "data" includes all information that supports the findings, conclusions, and recommendations for the consultant's reports, including computer models and the methodology for those models. [1997 c 373 § 1.]

RCW 39.29.090 Contracts awarded by institutions of higher education.

Personal service contracts awarded by institutions of higher education from nonstate funds do not have to be filed in advance and approved by the office of financial management. Any such contract is subject to all other requirements of this chapter, including the requirements under *RCW 39.29.068 for annual reporting of personal service contracts to the office of financial management. [1998 c 101 § 11.]

NOTES:

***Reviser's note:** Annual reporting requirements under RCW 39.29.068 were amended by 1998 c 101 § 10, and removed by 1998 c 245 § 33.

RCW 39.29.900 Severability—1987 c 414. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 414 § 13.]